

PUBLIC LAW BOARD NO. 7104

AWARD NO. 32

CASE NO. 32

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal (seniority termination) of Machine Operator Herman C. Nettles for violation of Rule 26 (b) in connection with failing to report for duty on 6XT2 beginning Sunday, September 16, 2008 and continuing is unjust, unwarranted and in violation of the Agreement (System File D21719108/2008-007560).
2. As a consequence of Part 1 above, we request that Mr. Nettles be granted remedy in accordance with Rule 25 of the Agreement."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant failed to report for work beginning September 16, 2008. He spoke with his foreman on September 23, 2008 to explain his absence and assured the foreman he would be present beginning September 30, 2008. When he failed to appear and the Carrier had no further contact from him, the Carrier mailed notice to him on October 21, 2008 pursuant to Rule 26(b), which provides as follows:

- (b) Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without notifying

his supervisor or proper carrier official will forfeit all seniority under this Agreement.


* * * The employee or his representative may appeal from such action to the carrier's Highest Designated Labor Relations Officer within thirty (30) days under rule 25, Section 3.

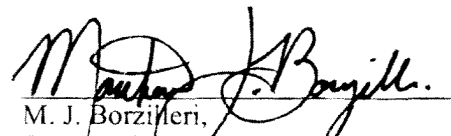
We have carefully reviewed the on-property record for the instant dispute. It does not provide any proper explanation for why claimant was absent for the entire month of October 2008 after providing assurance that he would be working. Accordingly, our review does not reveal any proper basis for finding that Rule 26 was improperly applied when the Carrier invoked the rule as it did. Accordingly, the claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Esq., Chairman


T. W. Kreke,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: May 28, 2010